

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-213647.3

**DATE:** September 10, 1984

**MATTER OF:** Spectrum Leasing Corporation

**DIGEST:**

1. A protester has the burden of presenting sufficient evidence to establish its case, and unsupported allegations do not meet that burden. Moreover, GAO does not conduct investigations to establish the validity of unfounded allegations, nor does it have authority to determine what information a contracting agency must disclose to a firm to aid it in proving its case.
2. A new basis for protest first raised in a reconsideration request must independently satisfy timeliness requirements, so that a protest of a contracting agency's evaluation filed more than 10 working days after the basis for protest was known or should have been known is untimely.
3. Reconsideration request that merely reiterates arguments or facts considered in GAO's original decision fails to meet the requester's burden of specifying any legal or factual errors in the decision.

Spectrum Leasing Corporation requests reconsideration of our decision in Spectrum Leasing Corporation, B-213647.2, July 2, 1984, 84-2 CPD ¶ \_\_\_\_\_, denying its protest against the Air Force's award of a contract to Vion Corporation to supply and maintain a direct access and storage device. The crux of Spectrum's protest was that Vion's offered equipment, the National Advanced Systems (NAS) Model 7380, failed to comply with the invitation for bids' requirement that all equipment must have been operated successfully in a production environment at commercial or government sites for at least a 6-month period prior to the issuance date of the solicitation. The record contained letters from Hitachi America, Ltd. stating that the

equipment, originally manufactured by Hitachi in Japan, had been operating in commercial sites in Japan for more than the 6-month period required by the invitation, even though the equipment did not become commercially available in the United States until shortly before the invitation's issuance. We therefore held that the Air Force properly determined that Vion's offered equipment satisfied the requirement for proven equipment.

The protester in its reconsideration request basically argues that there are significant differences between the equipment installed in Japan and Vion's offered NAS Model 7380, and that we failed to consider this factor when approving of the Air Force's determination. The protester also alleges a new ground for protest, and reiterates one of its previous grounds.

We affirm our prior decision and dismiss the new protest ground.

Although our prior decision does not explicitly so state, we indeed recognized in reaching our conclusion that Spectrum's protest alleged the equipment installed in Japan was not the NAS Model 7380 but the Hitachi Model 8598, which allegedly did not meet certain of the invitation's requirements. We pointed out, however, that the record contained an article from Management Information Systems Week, dated December 7, 1983, stating that Hitachi had started shipping its units more than a year before the issuance of the solicitation. That article refers to the equipment as Hitachi's "7380," not the model 8598. We also noted that the Air Force had obtained letters from Hitachi stating that the equipment had been installed in commercial sites in Japan more than 6 months prior to the invitation's issuance. The letters expressly stated that the installed equipment included the model 7380. From this information, we believed that the Air Force reasonably determined that the offered equipment complied with the requirement for proven equipment. We do not believe that the protester, who bears the burden of presenting sufficient evidence to establish its position, see Magnaflux Corporation, B-211914, Dec. 20, 1983, 84-1 CPD ¶ 4, ever presented to the Air Force or this Office sufficient evidence to render the Air Force's reliance on the article and the Hitachi letters unreasonable.

In this regard, Spectrum complains that it has been unable itself to obtain pertinent information from the Air

Force. If Spectrum desired information from the Air Force, it could have requested it pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (1982). Moreover, our Office has no authority under the Act to determine what information agencies must disclose, and therefore a protester's sole recourse where information is not furnished is to pursue the remedies provided under the Act. Surgical Instrument Company of America, B-212653, Nov. 30, 1983, 83-2 CPD ¶ 628.

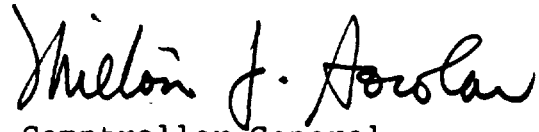
The protester also argues, for the first time, that if Hitachi and not NAS is the original equipment manufacturer as indicated in the Air Force's report on the protest and in our decision based on the record, then Vion's bid was nonresponsive since the solicitation required that all proposed equipment must be installed and maintained by the original equipment manufacturer. Since this argument was not raised in Spectrum's original protest it must independently satisfy our timeliness requirements for us to consider its merits. See Air Tech Industries--Reconsideration, B-211252.2, June 28, 1983, 83-2 CPD ¶ 37. Our Bid Protest Procedures require that a protest of this nature be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2). (1984). By its own admission, Spectrum first learned the basis of protest from the agency's report sent out at the end of April 1984. Since its reconsideration request raising the new protest ground was not received by this Office until July 18, the new protest clearly is untimely.

Moreover, since the record does not show that Vion's bid took exception to the requirement that the original manufacturer install and maintain the equipment, Vion was legally obligated to meet this requirement upon the acceptance of its bid. Whether the awardee had the capability of fulfilling its obligation was a matter for the contracting agency to consider in determining Vion's responsibility--that is, Vion's capability of performing the contract. The award necessarily entailed an affirmative responsibility determination in that respect, which we would not review, even if timely challenged, absent a showing of possible fraud on the part of procurement officials or that the invitation contained a definitive responsibility criterion which allegedly was not applied. See Gas Turbine Corporation, B-210411, May 25, 1983, 83-1 CPD ¶ 566. Neither circumstance exists here. Also, after a contract award, whether the contractor actually complies with its obligations raises a matter for the

contracting agency in administering the contract, and does not affect the validity of the award.

Finally, the protester reiterates an argument it raised in its initial protest. Because the invitation contained separate provisions requiring all offered equipment to be compatible with current Air Force equipment, and to be proven in a commercial or government work site for a 6-month period, the protester argues that the invitation should be read as also requiring that the equipment should have been demonstrated to be compatible with equipment identical to the Air Force's current equipment for the required 6-month period. In effect, the protester attempts to merge the requirements. We rejected this argument in our original decision and the protester has not provided any new arguments or facts regarding this matter in its reconsideration request. Rather, the protester merely disagrees with this aspect of our decision. Mere disagreement does not provide a basis for reversing the decision, see Lockheed Engineering and Management Services, Incorporated--Reconsideration, B-212858.2, Feb. 14, 1984, 84-1 CPD ¶ 193, since a protester requesting reconsideration bears the burden of specifying any errors of law made or information not previously considered by this Office. 4 C.F.R. § 21.9; B.K. Instrument, Inc.--Request for Reconsideration, B-212162.2, Feb. 14, 1984, 84-1 CPD ¶ 189.

The prior decision is affirmed and the new protest ground dismissed.



Acting Comptroller General  
of the United States